(21,885.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 659.

H. C. COOK COMPANY, PLAINTIFF IN ERROR,

vs.

FRANK H. BEECHER, CHARLES E. FAIRCHILD, THOMAS L. JAMES, AND WILLIAM A. WARD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 12, 1909.

a Be it remembered that on the 2nd day of April, A. D., 1909, a Bill of Complaint demanding $20,000 was filed in this Court and a writ issued thereupon, which Complaint and Writ, with the Marshal's return of service endorsed thereon, are in the words and figures following, viz:

1 UNITED STATES OF AMERICA,
District of Connecticut:

[SEAL.]

The President of the United States of America to the Marshal of Connecticut, Greeting:

You are hereby commanded to attach to the value of Twenty Thousand ($20,000.00) Dollars the goods and estate of Frank H. Beecher, Charles E. Fairchild, Thomas L. James and William L. Ward, and them summon to appear before the Circuit Court of the United States for the District of Connecticut, to be held at New Haven in said District on the 4th Tuesday of April, 1909, then and there to answer unto the H. C. Cook Company in a civil action wherein the plaintiff complains and says:

1. The defendants are all residents of the District of Connecticut.

2. The plaintiff is a joint stock corporation duly organized under and pursuant to the statute laws of Connecticut, in the City of Ansonia, in said District of Connecticut.

3. That on the 19th day of March, 1896, Julius D. C. Wenger than a resident of the City of Ansonia, in said Connecticut, by an instrument in writing recorded in Liber P. 52, page 167 of the Transfer of Patent Records of the United States Patent Office, sold, assigned and transferred an undivided one-half interest of all his rights and interest in and to a certain new invention and improvement in finger nail clippers, for which he the said Julius D. C. Wenger had then applied for Letters Patent, and which assignment was made to Lewis I. Cook of said Ansonia.

4. That afterwards on the 21st day of September, 1896, by an instrument in writing recorded in Liber P. 54, page 262 of the Transfer of Patent Records of the United States Patent Office, the said Julius D. C. Wenger sold, assigned and transferred to Chapel
2 S. Carter of said Ansonia, all of his remaining right, title and interest in and to the said invention and improvement in and to the patent to be obtained therefor.

5. That on the 20th day of October, 1896, Letters Patent of the United States duly signed, countersigned and sealed, were issued and delivered to the said Lewis I. Cook and the said Chapel S. Carter for the said invention and an improvement and dated October 20th, 1896, and #569903, thereby granting and securing unto the said Lewis I. Cook and Chapel S. Carter and their heirs and assigns, for the term of seventeen (17) years thereof, the full and exclusive right and liberty of constructing, using and vending to others to be used, the said invention as described in said Letters Patent.

6. That on or about the 31st day of January, 1898, by an instrument in writing recorded in Liber U 56, page 455 of the Transfer of Patent Records of the United States, the said Lewis I. Cook and the said Chapel S. Carter, then being the owners of all the right, title and interest in and to the said invention and Letters Patent #569903, sold, assigned, and transferred to Henry C. Cook in said Ansonia, an undivided one-half interest of all their right, title and interest in and to said invention.

7. That on the 12th day of April, 1900, by an instrument in writing recorded in Liber B 60, page 420 of the Transfer of Patent Records of the United States Patent Office, the said Henry C. Cook, Lewis I. Cook and Chapel S. Carter sold, assigned and transferred to the plaintiff, the said The H. C. Cook Company, all their right, title and interest in and to the said invention and the patent for the full term thereof.

8. That by virtue of the said transfer, the plaintiff became and ever since has been and is now the sole and exclusive owner of the said invention and Letters Patent and of the privileges and rights granted and secured thereby, and that since it became the owner of the said Letters Patent #569903, as aforesaid, the plaintiff
3 has been exclusively possessed of the invention thereby secured, and has put the same in practice by making and selling large numbers of finger nail clippers under and pursuant to said Letters Patent.

9. That the plaintiff gave a sufficient notice to the public that the said finger nail clippers obtained in and to the said Letters Patent were made and sold by the plaintiff and duly affixed on* to each of said clippers the word "patented" together with the date and year the patent was granted.

10. That on the 25th day of March, 1902, The Little River Mfg. Company, was duly organized as a corporation under and pursuant to the statute laws of the State of Connecticut. That the authorized capital stock of said corporation was Ten Thousand ($10,000.00) Dollars divided into four hundred (400) shares par value of Twenty Five ($25.00) Dollars each. That the amount of said authorized capital stock subscribed for was Ten Thousand ($10,000.00) Dollars, That of the amount of said subscribed capital stock which was paid in was the sum of Eight Thousand ($8000.00) Dollars in cash. That 100 per centum of the amount of authorized capital stock of said corporation has been subscribed for by bona fide subscribers, and that 80 per centum of said subscription has been paid in cash.

11. That said corporation was organized to purchase lease or otherwise acquire lands and buildings in the Town of Seymour or elsewhere for the erection and establishment of a manufactory and workshops with suitable plant or plants, engine, wheels and proper appurtenances for the use and development of steam, water and electric power and machinery with a view to manufacture, purchase, sell or otherwise deal in novelties, toys and other articles of metal; wood,

[*In pencil in copy.]

paper, or other materials, either directly or indirectly through the medium of agent or otherwise, to purchase or otherwise acquire patent rights and privileges, improved or secret process for or in any way relating to any of the objects aforesaid.

4 12. That said corporation duly adopted by-laws which provide for the election of a board of directors and a president, secretary and treasurer. That under and pursuant to said by-laws, afterwards to wit; on the 25th day of March, 1904, stockholders of said corporation at a meeting held by them elected the following named persons as directors of the said corporation, namely; Frank H. Beecher, Charles E. Fairchild, Thomas L. James and William L. Ward; and that each and all of said persons accepted said office and by reason of subsequent elections continued to act as directors of said corporation to the 1st day of January, 1907.

13. That on or about the 1st day of January, 1903, the said The Little River Mfg. Company well knowing the terms of the rights secured to the plaintiff in and to said Letters Patent, in the Town of Seymour, Connecticut, and at other places in the United States infringed the rights and privileges secured to the plaintiff under the said Letters Patent, by making, using and selling without permission or license of the plaintiff, certain finger nail clippers, known and described as the "Apt", each constructed in accordance with the said patent of the plaintiff, and each embodying and containing the invention described and obtained by the said Letters Patent.

14. That on the — day of ——, the plaintiff brought a certain action in equity against the said The Little River Mfg. Company, and which was returnable to the Circuit Court of the United States for the District of Connecticut on the — day of ——, in which action the plaintiff herein prayed that an injunction might issue from said Court against the said The Little River Mfg. Company, its trustees, directors, officers, servants, managers, agents, attorneys and workmen restraining them and each of them from making, constructing, using and vending to others by using any finger nail clippers containing or embodying the invention described and patented in the Letters Patent #569903.

5 15. That the said The Little River Mfg. Company duly entered its appearance in said Court, and thereupon said Court having fully heard the parties with their witnesses, evidence, exhibits and counsel, found and adjudged that the said The Little River Mfg. Company had prior to the commencement of said action infringed the said Letters Patent, owned by the plaintiff, and thereupon ordered, adjudged and decreed that the said The Little River Mfg. Company, its servants, trustees, directors, agents, attorneys, workmen, be strictly enjoined from any further act or acts infringing the said Letters Patent of the plaintiff, above described, and said court further ordered and adjudged that this plaintiff should recover of the said The Little River Mfg. Company as damages for the cost of said Company infringing the said Betters Patent of the plaintiff, the sum of Twelve Thousand Eight Hundred & Seventy One ($12,-871.00), and cost of said suit amounting to the sum of $496.35, and

which judgment is now in full force and effect, no appeal having been taken from said judgment.

16. That during all the time that the said The Little River Mfg. Company infringed the said patent of the plaintiff, the defendants were stockholders and directors of said company, and as such directors attended the various meetings held by the directors of said company, and voted to have the said The Little River Mfg. Company continue to manufacture and sell said clipper until final decision had been rendered by the court in favor of the plaintiff against the said The Little River Mfg. Company.

17. That on the 23rd day of July, 1904, a meeting of the directors of the said The Little River Mfg. Company was held at which the following vote was passed; "on motion of Mr. Charles E. Fairchild, it was voted to issue a bond of Ten Thousand ($10,000.00) Dollars to Mr. L. A. Boetiger, as an indemnity against loss in the sale of the "Apt" clipper due to suit of The H. C. Cook Company vs. The Little River Mfg. Company, Inc." The said
6 defendants, Beecher, Fairchild, James and Ward, were present at said meeting and voted in favor of giving said bond of indemnity.

18. That said vote was passed for the purpose of increasing the sale of said clipper and to make said sale as large as possible and for the further purpose of securing and retaining the services of the said Boetinger as selling agent for the said The Little River Mfg. Company.

19. That acting under and pursuant to said vote, the said The Little River Mfg. Company executed and delivered to the said Boetiger a bond of indemnity, a copy of which is hereto annexed and made a part of this complaint and marked plaintiff's "Exhibit A."

20. That upon the delivery of said bond of indemnity, the said Boetiger continued to act as the selling agent of the said The Little River Mfg. Company, and to sell and dispose of a large number of said clippers to the value of Ten Thousand ($10,000.00) Dollars, and continued such sales until the final judgment of the court as above stated.

21. That the defendants, Beecher, Fairchild, James and Ward, constituted a majority of the directors of the said The Little River Mfg. Company, and during all the time of the infringement of the plaintiff's patent, the said Beecher, Fairchild, James and Ward were in the full control and management of said company.

22. That while having such control and management of the said company, the said, Beecher, Fairchild, James and Ward, did as directors and as individuals, employ certain servants, agents, workmen and employees to make, sell and dispose of said clippers, for and in the name of the said The Little River Mfg. Company, and did order, instruct, authorize, empower and command said servants, agents, workmen from time to time as to the making of said clippers, and the number and appearance of the same, and did furnish
7 all the materials that were necessary to make and deliver said clippers, and to prepare them ready for sale; and did

any and all other acts that were necessary or convenient for the manufacture and sale of said clippers.

23. That in addition to attending the meetings of the board of directors of the said The Little River Mfg. Company, and voting therein to manufacture and continue said clippers and to provide the necessary means therefor, the said Beecher, Fairchild, James and Ward as individuals, jointly and severally from time to time during the entire period of infringing the patent of the plaintiff by the said The Little River Mfg. Company, did advise, counsel, instruct, direct, command and aid the servants, agents and employees of the said The Little River Mfg. Company in the making and selling of said clipper, and did order and direct them as to the number of clippers to be made, and as to the method of selling the same.

24. That the said Beecher, Fairchild, James and Ward, as directors and as individuals jointly and severally, authorized and directed the employment of counsel and witnesses for the purpose of defending the action brought by the plaintiff against the said The Little River Mfg. Company, and instructed and directed said counsel to take such steps and adopt such means and measures as in his judgment was essential and necessary to defend said action; and said defendants authorized, and advised and directed to be used for the purpose of paying said counsel, witnesses and other expenses incurred by said counsel and the said The Little River Mfg. Company, in the defense of said action, the numerous funds and assets of said Company.

25. That in consequence of and as a result of the use of the numerous funds and assets of the said The Little River Mfg. Company in the manufacture and sale of said clipper and in the defense of said action, as aforesaid, the entire cash capital of said company was expended, and by reason thereof said company became
8 insolvent; and on the — day of ——, the Superior Court for New Haven County in said District, appointed Clifford J. Atwater of said Seymour, Receiver for said company, and the said Atwater accepted said appointment and ever since has been and is now engaged in the discharge of his duty as such Receiver.

26. That on the — day of ——, the said Atwater as such receiver filed in this court an inventory of the entire property and assets of said company, and which amounted to the sum of——

27. That on the — day of ——, the said Atwater as such Receiver, made return to said Superior Court, that the total amount of debts and claims presented to him against the said The Little River Mfg. Company amounted to the sum of ——.

28. That the said The Little River Mfg. Company is now entirely and hopelessly insolvent and unable to pay anything upon the debts, claims and liabilities presented to the said Receiver, and the plaintiff is now unable and will be forever unable to obtain payment either in whole or in part from the said The Little River Mfg. Company, or from said Receiver, of the amount due to it upon said judgment.

29. That during all the time that the said Beecher, Fairchild, James and Ward were stockholders and directors of the said The Little River Mfg. Company, they had full knowledge of the plain-

tiff's patent and that the plaintiff had given written notice to the said The Little River Mfg. Company that the manufacture and sale of the said "Apt" clipper by the said company was an infringement of the plaintiff's patent.

30. The defendants had full knowledge of the financial condition of the said The Little River Mfg. Company, and knew that in the event of a judgment being rendered for the plaintiff in the action brought against the said company, as above described, that the said company would thereby be prevented from continuing to manufacture and sell said "Apt" clipper and that said company would be hopelessly insolvent and thereby unable to pay the judg-
9 ment that would be rendered against it in favor of the plaintiff.

31. The defendants, Beecher, Fairchild, James and Ward advised, counseled and directed in the infringement of the plaintiff's patent, as above described, for the purpose of receiving and participating in the profits and dividends that might be received from the manufacture and sale of said "Apt" clipper; and each and all of the acts done and performed by them, as above described, was for the further purpose of enhancing and increasing the value of capital stock of said company owned by them as individuals.

32. That said The Little River Mfg. Company could not have manufactured and sold any of said clippers without the aid, assistance and direction of the said Beecher, Fairchild, James and Ward, as above described.

The plaintiff claims Twenty Thousand ($20,000.00) Dollars damages.

Verrenice Munger of Ansonia, within said State and District of Connecticut, is recognized in the sum of One Hundred & Fifty ($150.00) Dollars to prosecute, etc.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the Seal of said Circuit Court, at Hartford, in said District, this 2nd day of April, 1909.

E. E. MARVIN, *Clerk.*

MUNGER & MUNGER,
Attorneys for the Plaintiffs.

10 UNITED STATES OF AMERICA,
District of Connecticut,
County of New Haven, ss:

TOWN OF SEYMOUR, THE 5TH DAY OF *April*, 1909.

Then and there by virtue of this writ, and special direction of Munger & Munger, the plaintiff's attorney, I made an attachment (by lodging in the office of the Town Clerk of said Town of Seymour, an attested certificate of attachment by me signed, describing the property attached, the parties to this suit, the authority issuing said writ, the Court to which said writ is returnable, and the amount of damages therein claimed, said certificate being in all respects as directed by the statutes of this State,) of all the right, title and interest of Frank H. Beecher, one of the defendants named in this

writ, in and to two certain lots, tracts or parcels of land, with the buildings thereon, lying in said Town of Seymour, and bounded and described as follows, to wit:

First Piece: North by land of D. T. Dunham and highway; east on land of H. E. Hitchcock, August Lang, C. H. Jorey, D. T. Dunham and M. Regan; south on land of M. Regan and highway; west on highway, land of M. Peck, J. Sinclair, Z. B. Davis, S. J. Miles, E. K. Tomlinson, A. B. Dunham and D. T. Dunham, containing four acres more or less.

Second Piece: Northwesterly on Little River, running to a point at Iron Bridge at northeasterly corner of said property; easterly on Church Street; southwesterly on Beecher Street; and westerly on land of E. Beecher.

Also of all the right, title and interest of Charles E. Fairchild, one of the defendants named in said writ, in and to one certain tract or parcel of land with buildings thereon lying in said Town of Seymour, bounded and described as follows, to wit:

North by land of M. H. Beach and Mary and A. M. Eggleston; east on highway known as Washington Ave.; south on land of St. Augustine Roman Catholic Society, and west by highway known as Humphrey Street, containing one acre more or less.

Also of all the right, title and interest of Thomas L. James, one of the defendants named in said writ, in and to one certain tract or parcel of land with building thereon lying in said Town of Seymour, bounded and described as follows; to wit:

North on land of T. S. Tyrell; east on highway known as Pearl Street; south on highway known as Stoddard Street; and west by land of Charles Maybury, containing one acre more or less.

Also of all the right, title and interest of William L. Ward, one of the defendants named in said writ, in and to 35 shares, together with the interest, dividends, and profits, due, and growing due thereon, of the capital stock of the W. L. Ward Co., a corporation duly incorporated under the laws of this State, and located in the Town of Seymour, said 35 shares of stock being those belonging to, and now standing in the name of William L. Ward, the within named defendant.

And on the 5th day of April, 1909, I left with Lulu J. Ward, Secretary of said corporation, a true and attested copy of this writ and complaint, with my said doings thereon endorsed.

11 And on the said 5th day of April, 1909, I left in the Town Clerk's Office in the Town of Seymour, a true and attested copy of this writ with my said doings thereon endorsed.

And on the said 5th day of April, 1909, I left like true and attested copies of this writ, at the usual place of abode of the within named W. L. Ward and Charles E. Fairchild, and with Thomas L. James and Frank H. Beecher, personally.

Attest:

EDSON S. BISHOP,
U. S. Marshal for the District of Conn.,
By WILLIAM L. PARMELEE,
Deputy U. S. Marshal.

Fees:

10 Miles travel	$ .60
7 Services	14.00
	$14.60

Expenses:

Cash paid Town Clerk	$1.20
Searching Records	1.00
	$16.80

(Endorsed:) Filed April 8, 1909, E. E. Marvin, Clerk, W.

12 And on the same day Messrs. Munger & Munger of Ansonia, Connecticut, entered their appearance as attorneys for the plaintiff.

And thereafter on the 8th day of April, 1909, E. A. Harriman, Esq., of New Haven, Connecticut, entered his appearance as attorney for the defendants.

And thereafter on the 27th day of April, 1909, plaintiff filed a paper marked "Exhibit A."

13 *"Bond."*

Whereas, The Little River Mfg. Company, a corporation organized and existing under the laws of the State of Connecticut and located and carrying on business in Seymour, County of New Haven, State of Connecticut is the manufacturer of certain improvements in finger-nail clippers known to the trade as "Apt clippers" of which Letters Patent of the United States #671793 dated April 9, 1901 and #725946 dated April 21, 1903 were granted to John C. Ernst, of both of which inventions and said Letters Patent thereof said Little River Mfg. Company is the owner and

Whereas, Louis A. Boettiger of the City of New York, Borough of Manhattan in the County and State of New York is engaged in selling among other merchandise, said finger nail clippers manufactured by said The Little River Mfg. Company, and

Whereas, said Louis A. Boettiger is desireous of being protected against suits or proceedings at law or any -quity upon any legal cause of action for infringement of other Letters Patent of the United States by reason of the manufacture and sale of said finger-nail clippers and

Whereas, at a meeting of the board of directors of the Little River Mfg. Company held at Seymour, County of New Haven, and State of Connecticut on the 23rd day of July, 1904, a resolution was adopted to issue a bond of said Little River Mfg. Company in a sum of ten thousand dollars to said Louis A. Boettiger as an indemnity against loss in the sale of said Apt Clippers due to the suit of The H. C. Cook Company against The Little River Mfg. Company.

Now Therefore, The Little River Mfg. Company covenants and agrees to defend said suit of The H. C. Cook Company or any other suit or proceedings either at law or in equity which may be instituted and prosecuted against either The Little River Mfg.
14 Company or said Louis A. Boettiger on any alleged claim of infringement or any other Letters Patent of the United States by reason of the sale of said Apt clippers; to *defer* the entire expense of any such suit or proceedings, to pay when fully adjusted any verdict or award for damages or profits in any such suit or proceedings and to do all in its power to protect, defend and save harmless said Louis A. Boettiger from all loss or damages in the sale of said Apt clippers and from any verdict or award of damages or profits in any such suit or proceedings and protect any said suit of The H. C. Cook Company against The Little River Mfg. Company.

Now, Therefore, in pursuance of the aforesaid resolution and for the indemnification of said Louis A. Boettiger in said suit or suits, The Little River Mfg. Company is here and formally bound unto said Louis A. Boettiger in the sum of ten thousand dollars lawful money of the United States of America to be paid to the said Louis A. Boettiger, his executors and assigns for which payment well and truly to be made, the said The Little River Mfg. Company itself and its executors, assigns or other legal representatives formally by this presence.

The condition of this bond is such that if the said The Little River Mfg. Company shall fully and faithfully defend and protect said Louis A. Boettiger from any loss or damage in the said suit of the H. C. Cook Company or any other suit or proceedings which may be brought hereafter against either the Little River Mfg. Company or said Louis A. Boettiger upon any alleged cause of action for infringement by reason of the manufacture and sale of said Apt nail clippers and shall save harmless the said Louis A. Boettiger from any verdict or award of damages or profits in any such suit or suits, then this obligation is to be void and otherwise to remain in full force and virtue.

Witness the hand and seal of the Little River Mfg. Company this — day of —— by —— ——, President.

Attest.

—— ——,
Secretary.

Filed April 27th, 1909.
E. E. MARVIN, *Clerk.*
C. E. P.

15 And thereafter on the 5th day of May, 1909, defendants filed Motion to Expunge portion of the Complaint, which Motion is in the words and figures following, viz:

16 The Circuit Court of the United States, District of Connecticut.

At Law. No. —.

May 4, 1909.

THE H. C. COOK COMPANY
vs.
FRANK H. BEECHER et al.

Motion of the Defendant to Expunge Portions of the Complaint.

In the above entitled action the defendants move that each of the following portions of the complaint be expunged because each of said portions is irrelevant and immaterial.

1. All of paragraph 10 except the first sentence.
2. In paragraph 13, the words: "well knowing the terms of the rights secured to the plaintiff in and to said letters patent."
3. Paragraph 14.
4. Paragraph 15.
5. The following words in paragraph 16: "and such directors attended the various meetings held by the directors of said company."
6. The following words in paragraph 16: "and voted to have the said The Little River Mfg. Company continue to manufacture and sell said clipper until final decision had been rendered by the court in favor of the plaintiff against the said The Little River Mfg. Company."

17 7. Paragraph 17.
8. Paragraph 18.
9. Paragraph 19.
10. Paragraph 20.
11. Paragraph 24.
12. Paragraph 25.
13. Paragraph 26.
14. Paragraph 27.
15. Paragraph 28.
16. The following portion of paragraph 29: "and that the plaintiff had given written notice of the said The Little River Mfg. Company that the manufacture and sale of the said "Apt" clipper by the said company was an infringement of the plaintiff's patent."
17. The following words in paragraph 30: "The defendants had full knowledge of the financial condition of the said The Little River Mfg. Company."
18. The following words in paragraph 30: "and knew that in the event of a judgment being rendered for the plaintiff in the action brought against the said company, as above described, that the said company would thereby be prevented from continuing to manufacture and sell said "Apt" clipper and that said company would

be hopelessly insolvent and thereby unable to pay the judgment that would be rendered against it in favor of the plaintiff."

19. Paragraph 31.

20. Paragraph 32.

DEFENDANTS,
EDWARD A. HARRIMAN,
By Their Attorney,

18 And thereafter on the 14th day of June, 1909, the parties by their respective counsel duly appeared in Court and said motion was particularly heard, the Court raising the question of jurisdiction and further hearing was postponed to June 28, 1909, when the Court heard the further arguments and reserved decision.

And thereafter on the 28th day of June, 1909, the Court filed its Opinion dismissing the Complaint for lack of jurisdiction, which Opinion is in the words and figures following, viz:

19 United States Circuit Court, District of Connecticut.

No. 731. Law.

THE H. C. COOK COMPANY
vs.
FRANK H. BEECHER et al.

PLATT, *District Judge:*

The plaintiff had a patent suit in this Court against the Little River Manufacturing Company. The defendants were the directors of the Company during all the time that case was pending. Upon a proper showing they could have been made co-defendants in that suit. A strenuous effort was made to bring them in by amendment at the last moment, which was refused because it came too late.

In the somewhat elaborate complaint now under discussion the plaintiff rehearses the story about the patent litigation and then goes on to allege that the defendants were joint trespassers with the Little River Manufacturing Company in respect of the infringing acts set forth in the former litigation and for which judgment went against the Corporation. For that reason he insists that they ought to pay that judgment. His theory seems to be that because the directors and the Corporation were joint trespassers, they must all be jointly responsible for the damages found to have resulted from the trespass charged against one of them alone.

However that may be, it is very clear that the nature of the trespass is not material to the present litigation. The only questions to be litigated are:

1. Does the plaintiff own the judgment?

2. Were the Corporation and the directors joint trespassers as alleged?

20 3. If they were, what is the situation now in respect of the judgment as to four of them about whom the plaintiff remained silent in the patent litigation?

The details of that litigation add nothing to the strength of the complaint. The plaintiff could as well have started with the fact that it had title to the judgment obtained in that litigation and then followed with the rest of its complaint, which sets up new matter, and may or may not set forth a cause of action.

To put the matter in a nutshell.—The plaintiff has a judgment for something near $12,000 damages for infringement of a patent. That is over and done with. The Corporation is insolvent and the plaintiff wishes the directors to pay that judgment. This is new matter and is purely a question of law and fact growing out of the relationship between the Corporation and its directors, and is in no sense of the word a patent case. All the parties interested are citizens of Connecticut. The whole matter is one over which the courts of the State have exclusive jurisdiction, and which it would seem intrusive for this Court to attempt to touch.

Plaintiff urges the rule that judgment against one joint trespasser without full satisfaction is no bar to a suit against another for the same trespass. Lovejoy vs. Murray, 3 Wall. 1.

The fault in his logic is that this complaint is not a suit against the directors for the infringement of the patent. It is a suit to recover from these defendants as joint trespassers the fruits of the infringing acts of their original joint trespasser, the Little River Manufacturing Company. Neither the validity of the patent nor its infringement is put in issue by the complaint.

Plaintiff urges that the title to the patent is at issue. I cannot agree with him. The title to the judgment under the patent
21 is undoubtedly at issue, but it is of no importance whether the plaintiff now owns the patent or not. He may have sold the patent and retained the right to recover the judgment obtained for a trespass upon his rights when he did own it.

The plaintiff's other point is that the suit is in the nature of an ancillary action, and that the Court has jurisdiction to enforce payment of the judgment described in the complaint. The trouble with that argument is that this suit is not in the nature of an ancillary action. The plaintiff sought ancillary relief when it asked permission to amend its bill in the original litigation. This Court then had jurisdiction, and in the exercise of its best discretion, refused the relief. The plaintiff was then told that it had a right to pursue its rights in a new suit.

The refusal to permit the amendment was acquiesced in by the plaintiff, and with its eyes open it proceeded to take judgment against the Corporation alone. With the entry of that judgment the jurisdiction of the Court over these parties as litigants in a patent suit ended. It cannot be revived in the way suggested.

It is fair to say in conclusion that the defendants have not raised the question of jurisdiction. The responsibility for the action herein ordered rests entirely upon my shoulders. The jurisdictional defect

is obvious upon the face of the papers, and action has been taken at the first opportunity offered.

Let the complainant be dismissed for lack of jurisdiction.

Verenice Munger, Esq., for Plaintiff.
Edward A. Harriman, Esq., for Defendants.

(Endorsed:) Filed June 29th, 1909. E. E. Marvin, Clerk, L. G.

22 And thereafter on the 14th day of July, 1909, the Court rendered judgment dismissing Complaint for want of jurisdiction, with costs to be taxed, which judgment is in the words and figures following, viz:

23 United States Circuit Court, District of Connecticut.

No. 731. Law.

THE H. C. COOK COMPANY
vs.
FRANK H. BEECHER et al.

Judgment.

In this cause the complaint having been duly served upon the defendants as appears by the Marshal's return, and the plaintiff having appeared by Verrenice Munger, its attorney, and the defendant having appeared by Edward A. Harriman, their attorney thereupon said cause was duly entered upon the docket of said court, and afterwards to wit; on the 5th day of May, 1909, the defendant filed in said cause their motion to strike out certain portions of the complaint. Thereupon on the 14th day of June, 1909, said parties were duly heard by said court at the City of Hartford upon said motion of the defendants, and during the hearing on said motion, the Judge holding said court suggested to counsel whether said court had jurisdiction to hear and determine said action upon the allegations contained in said complaint, as it appeared from said allegations that no question was stated therein, which could be heard and decided in a court of federal jurisdiction, but that any and all questions alleged in said complaint were exclusively within the jurisdiction of a state court. Thereupon said cause was continued until the 28th day of June, 1909, when said parties again appeared and were heard by said court upon the question whether said court had jurisdiction to hear and determine the questions, which arose upon the allegations of said complaint, and after hearing said parties, said court
24 was of the opinion that he was without jurisdiction to try the issues presented in said complaint, wherefore, it is considered and adjudged, by the Court here, this 14th day of July, A. D. 1909, that the plaintiff's complaint is dismissed for want of jurisdiction, with costs to the defendant to be taxed.

Attest:

E. E. MARVIN, *Clerk.*

(Endorsed:) Filed July 14, 1909, E. E. Marvin, Clerk, W.

25 United States Circuit Court, District of Connecticut.

THE H. C. COOK MFG. CO.
vs.
FRANK H. BEECHER et al.

Certificate as to Jurisdictional Questions.

To the Honorable the Supreme Court of the United States:

I, the undersigned Judge hereby certify that upon the hearing in the above entitled case of a motion made by the defendants to strike out certain portions of the complaint, I suggested the question of whether or not I had jurisdiction to try and determine the issues in said cause, whereupon said question was fully argued by the Complainant's Attorney, and upon due consideration, judgment was rendered by the Court in favor of the defendant, dismissing the cause for want of jurisdiction, with costs to the defendant. And the defendant having prayed for the issuance of a writ of error that the matters involved in said judgment may be heard by the Supreme Court of the United States. I hereby further certify, that the only questions to be decided upon and under the said writ of error of the Supreme Court are

First. Whether or no all the questions arising upon said complaint are within the sole and exclusive jurisdiction of a State Court.

Second. Whether the Circuit Court of the United States for the District of Connecticut has jurisdiction to hear and determine the cause.

All of which is respectfully submitted.

JAMES P. PLATT, *Judge.*

26 And thereafter on the 4th day of October, 1909, plaintiff filed Petition for Writ of Error, Assignment of Errors and Bond on Writ of Error, which are in the words and figures following, viz:

27 In the Circuit Court of the United States for the District of Connecticut.

At Law.

THE H. C. COOK COMPANY, Plaintiff,
vs.
FRANK H. BEECHER et als., Defendants.

Petition for Writ of Error.

To the Honorable Circuit Court of the United States, for the District of Connecticut:

The petition of the plaintiff above named respectfully shows to this Court:

That by the judgment of this Court entered on the 28th day of

June, 1909, a manifest error hath happened to the great damage of the said plaintiff and they are desirous that the said error should be duly corrected and full and speedy justice done in the said cause.

Therefore the said plaintiff prays this court that a writ of error may issue directed to this Court and that all proceedings upon the said judgment may be heard in the Supreme Court of the United States of America for the correction therein of said errors as aforesaid.

VERRENICE MUNGER,
Attorney for Plaintiff.

(Endorsed:) Filed Oct. 4, 1909, E. E. Marvin, Clerk, W.

28 In the Circuit Court of the United States for the District of Connecticut.

THE H. C. COOK COMPANY, Plaintiff,
vs.
FRANK H. BEECHER et als., Defendants.

Whereas, the Circuit Court of the United States for the District of Connecticut, rendered a judgment in the above cause in favor of the defendants and against the plaintiff. The plaintiff hereby assigns as errors in the said judgment and the rulings of the court therein the following:

Assignment of Errors.

First. In holding and deciding that the Circuit Court for the District of Connecticut did not have jurisdiction to hear and determine the questions presented by the complaint in said action and in deciding to dismiss said action from court on the ground that the said Circuit Court had no jurisdiction.

Second. In holding and deciding that the questions presented upon the record, in said action, did not involve questions arising under the patents owned by the plaintiff as described in the complaint in said action, and that the whole matter was one over which the courts of the state have exclusive jurisdiction.

Third. In holding and deciding that said action was not one against the defendants as directors of the Little River Mfg. Company for the infringement of the patent, described in the plaintiff's complaint.

Fourth. In holding and deciding that the validity of the patent, described in the complaint, and the infringement thereof was not put in issue by the plaintiff's complaint.

Fifth. In holding and deciding that the title to the patent, described in the complaint, was not at issue in this action.

29 Sixth. In holding and deciding that it is of no importance in this action whether the plaintiff now owns the patent or not.

Seventh. In holding and deciding that upon the entry of the judgment of said Circuit Court in the action described in said complaint, wherein the present plaintiff was plaintiff, and the Little River Mfg. Company was defendant, that the jurisdiction of said Circuit Court over these parties as litigants in a patent suit ended, and that it cannot be revived by the institution of this present suit.

VERRENICE MUNGER,
Attorney for Plaintiff.

(Endorsed:) Filed Oct. 4, 1909, E. E. Marvin Clerk. W.

30 In the Circuit Court of the United States, District of Connecticut.

No. 731. Law.

THE H. C. COOK COMPANY, Plaintiff,
vs.
FRANK H. BEECHER et als., Defendants.

Bond on Writ of Error.

Whereas on the 28th day of June, 1909, a judgment was rendered and entered by the Circuit Court of the United States for the District of Connecticut, in an action therein pending wherein The H. C. Cook Company, a corporation duly organized, is plaintiff, and Frank H. Beecher, et als., were defendants, in favor of the defendants and against the plaintiff, and which judgment resulted in the dismissal of said action from court and that the defendants recover of the plaintiff their costs; and

Whereas the plaintiff feeling aggrieved thereby have petitioned for a writ of error to issue out of the Supreme Court of the United States to the said Circuit Court of the United States aforesaid to correct the errors in the record and proceedings and the said judgment in the said cause by them complained of.

Now therefore, we, the undersigned do hereby bind ourselves our heirs, executors and administrators, jointly and severally, firmly by these presents in the sum of Five Hundred Dollars ($500.00), and undertake and promise that the said above named plaintiff will well and diligently prosecute the said writ of error to effect in the Supreme Court of the United States, and will pay all costs that may be awarded against them in the event that they fail to make their plea good, or said writ be dismissed.

31 Dated at Ansonia this 27th day of September, 1909.

CHAPEL S. CARTER. [L. S.]
VERRENICE MUNGER. [L. S.]

The above bond is approved.
JAMES P. PLATT,
U. S. Judge.

(Endorsed:) Filed Oct. 4, 1909, E. E. Marvin, Clerk, W.

32 I, Edwin E. Marvin, Clerk of the Circuit Court of the United States of America, of the Second Judicial Circuit, in and for the District of Connecticut, do hereby certify the foregoing to be a full, true and correct copy of the record and proceedings in the above and therein-entitled cause, as the same remains of record and on file in the office of the clerk of said Circuit Court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is $18.15; that said amount was paid by Messrs. Munger & Munger, attorneys for the above-named plaintiff; and that the original writ of error and citation issued in said cause are hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 14th day of October, A. D., 1909.

[Seal of Circuit Court, Connecticut.]

E. E. MARVIN,
Clerk of the United States Circuit Court, Second Judicial Circuit, District of Connecticut.

33 & 34 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Judges of the Circuit Court of the United States, in the Second Judicial Circuit, for the District of Connecticut, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Circuit Court before you between the H. C. Cook Company, plaintiff, and Frank H. Beecher, Charles E. Fairchild, Thomas L. James and William A. Ward, defendants, a manifest error hath happened to the great damage of the said plaintiff, the H. C. Cook Company as by their complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and fully and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington in the District of Columbia on the second day of November next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to law and custom of the United States should be done.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 4th day of October, in the year of our Lord, one thousand nine hundred and nine and of the independence of the United States the one hundred and thirty-fourth.

E. E. MARVIN, *Clerk.*

The above writ of error is hereby allowed.

JAMES P. PLATT,
United States District Judge,
District of Connecticut.

35 MUNGER & MUNGER,
Attorneys for Plaintiff in Error.

Due and legal service of the above writ of error is hereby acknowledged this 6th day of October, 1909.

EDWARD A. HARRIMAN,
Attorney for Defendants in Error.

Filed Oct. 6, 1909.
E. E. MARVIN, *Clerk.*

36 The return of the Judges of the Circuit Court of the United States of the Second Judicial Circuit in and for the District of Connecticut.

The record and all proceedings of the plea whereof mention is within made, with all things concerning the same, we certify under the seal of our said Court, to the Supreme Court of the United States within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court:

[Seal of Circuit Court, Connecticut.]

E. E. MARVIN, *Clerk.*

37 UNITED STATES OF AMERICA, *ss:*

To Frank H. Beecher, Charles E. Fairchild, Thomas L. James and William A. Ward, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, on the 2nd day of November, A. D. 1909, pursuant to a writ of error issued by the Supreme Court of the United States to the Circuit Court of the United States in the Second Judicial Circuit, for the District of Connecticut to correct errors in the proceedings and record, and also in the rendition of the judgment of a plea which is in the said Circuit Court and entered July 14, 1909, and in which The H. C. Cook Company are plaintiffs and you are Defendants, to show cause, if any there be, why the errors appearing in the said record, proceedings and judgment mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable James P. Platt, United States District Judge for the District of Connecticut, sitting as Judge of the said Circuit Court of the United States, Second Judicial Circuit, this 4th

day of October, A. D. 1909, and of the Independence of the United States, the one hundred and thirty-fourth.

JAMES P. PLATT,
U. S. Judge.

Due and legal service of the above citation is hereby acknowledged.

EDWARD A. HARRIMAN,
Attorney for Defendants in Error.

Filed Oct. 8, 1909.
E. E. MARVIN, *Clerk.*

Filed Oct. 4, 1909.
E. E. MARVIN, *Clerk.*
W.

Endorsed on cover: File No. 21,885. Connecticut C. C. U. S. Term No. 659. H. C. Cook Company, plaintiff in error, vs. Frank H. Beecher, Charles E. Fairchild, Thomas L. James, and William A. Ward. Filed October 30th, 1909. File No. 21,885.

[redacted]

[redacted]

THE E. C. COOK COMPANY,

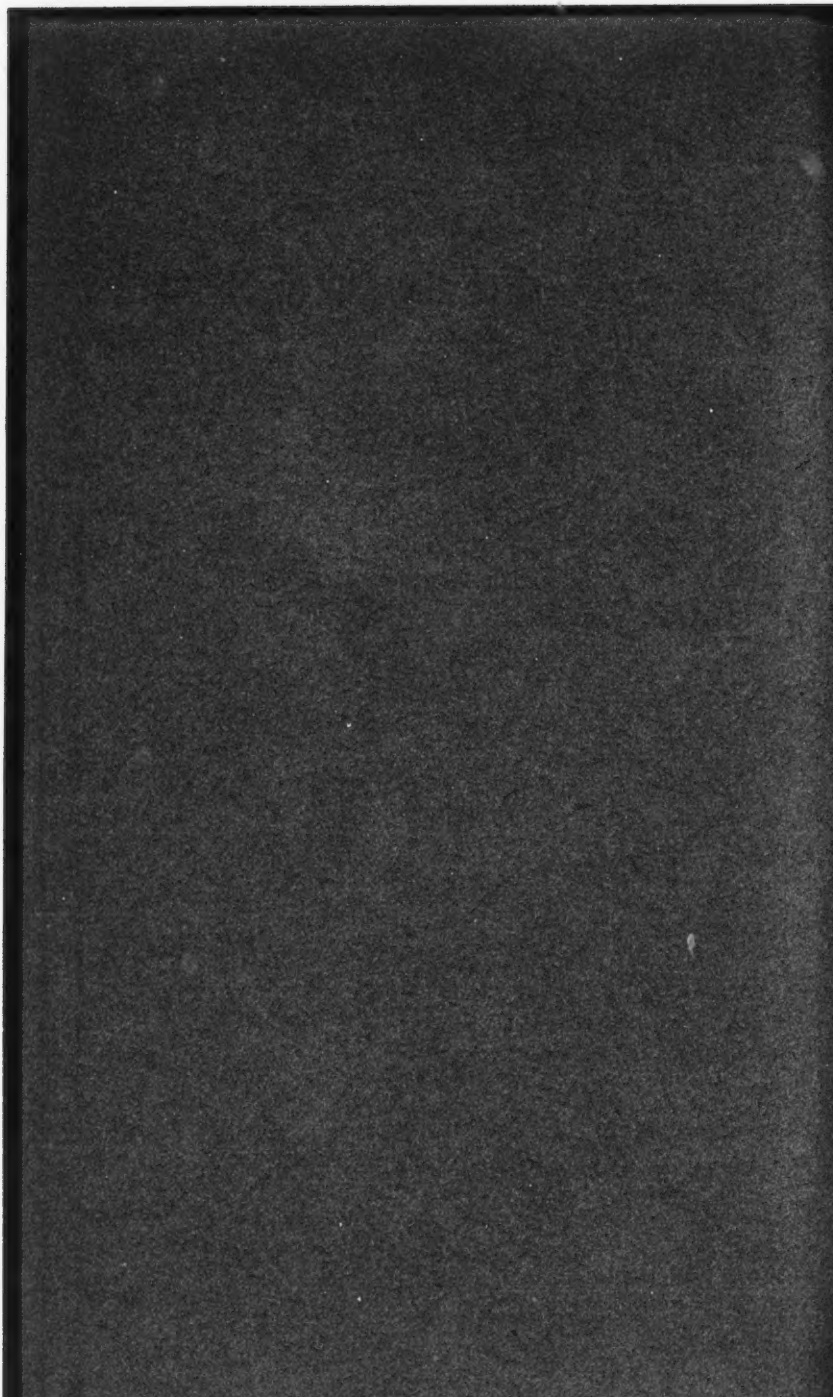
Plaintiff in Error,

vs.

[redacted]

Defendant in Error.

BRIEF FOR THE PLAINTIFF IN ERROR.



Supreme Court of the United States

THE H. C. COOK COMPANY, Plaintiff in Error, *against* FRANK H. BEECHER, CHARLES E. FAIRCHILD, THOMAS L. JAMES and WILLIAM L. WARD, Defendants in Error.	No. 659.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

In the decision of the questions presented by the record the plaintiff in error will be referred to as the plaintiff and the defendants in error as the defendants.

The plaintiff is now and ever since the 12th day of April, 1900, has been the owner of Letters Patent issued by the United States for an improvement in Finger Nail Clippers. Prior to March 25th, 1902, the plaintiff had established a lucrative and prosperous business in the manufacture and sale of these clippers. On that date The Little River Mfg. Company was organized as a corporation under the laws of Connecticut with a capital of ten thousand dollar ($10,000.00), eight thousand of which was paid in cash. The defendants on the 25th day of August, 1904, were duly elected directors of said corporation and have ever since been and are now acting as such directors, being a majority of the directory board.

On or about the 1st day of January, 1903, and thereafter, the said The Little River Mfg. Company began the manufacture and sale of a finger nail clipper known as the "Apt," which was so constructed as to be an infringement of the plaintiff's patent. Thereupon the plaintiff instituted a suit in the Circuit Court for the District of Connecticut asking that the said corporation, its directors, officers and agents should be enjoined from the further infringement of the plaintiff's patent. After a trial the court found the issues in favor of the plaintiff, and thereupon issued an injunction as prayed for in the complaint. The injunction order ran against The Little River Mfg. Company, its servants, trustees, directors, agents, attorneys and workmen. The court further found that the plaintiff had sustained damages by the infringing acts of said corporation in the sum of twelve thousand eight hundred and seventy-one dollars ($12,871.00) and four hundred and ninety-six dollars and 35-100 ($496.35) costs of suit, and rendered judgment in favor of the plaintiff against said corporation for these sums. Pending the proceedings in said Circuit Court, and before the rendition of said final judgment, The Little River Mfg. Company became and is now insolvent. A receiver was appointed by the courts of Connecticut and its affairs are now in process of settlement. As a result of such insolvency the plaintiff is unable to obtain satisfaction of its judgment. It appears that during all the time the corporation was infringing the plaintiff's patent the defendants were directors of said corporation, and it was through their active efforts that the infringing acts were committed. The financial condition of The Little River Mfg. Company was unknown to the plaintiff at the time suit was instituted. Upon the filing of the master's report a motion was made by the plaintiff to file a supplemental bill and cite in the present defendants as additional defendants in the action then pending. That motion was denied and thereupon the present action was brought. The defendants prepared and filed a motion to expunge certain paragraphs from the complaint. At the hearing of this motion the court of its own motion raised the question of jurisdiction, and afterwards dismissed the case on the ground that the court did not have

jurisdiction to hear and pass upon the questions presented on the record. From that dismissal the present writ of error is brought.

ARGUMENT.

The record presents for review a single question which is, did the Circuit Court have jurisdiction to entertain the case as made by the allegations of the complaint. If those allegations involve issues arising under the patent laws of the United States, then it is clear that the court did have jurisdiction. It is, therefore, apparent that the case turns upon the construction of the complaint. In the opinion given by the Circuit Court it is said, "plaintiff urges the rule that judgment against one joint tres-"passer without full satisfaction is no bar to a suit against another "for the same trespass." Citing *Lovejoy vs. Murray*, 3 Wall., 1 "The fault in his logic is, that this complaint is not a suit "against the directors for the infringement of the patent, it is a "suit to recover from these defendants, as joint trespassers, the "fruits of the infringing acts of their original joint trespassers, "The Little River Mfg. Company. Neither the validity of the "patent nor its infringement is put in issue by the complaint." Record, page 12.

We submit that in the expression of these views the court clearly misconceived the nature and purpose of the action. The complaint is based on the well established principle that all parties concerned in a trespass are jointly and severally liable, and that an unsatisfied judgment against one of said parties is not a bar to an action against the others. As the original action was against the corporation it becomes important and, perhaps, essential to show how these defendants, as directors, are liable with the corporation. Ordinarily the directors of a corporation may not be personally liable to an action for damages sustained by unlawful acts of the corporation, but this rule does not go to the extent of exonerating a director who directs, author-

izes or commits a trespass in order to promote his individual interest. Directors can only plead immunity from liability when they act for and in behalf of the corporation in doing those acts it may lawfully do. The original action was against The Little River Mfg. Company for an infringement of the plaintiff's patent. Judgment was rendered against it to recover twelve thousand eight hundred and seventy-one dollars ($12,871.00) damages and four hundred and ninety-six and 35-100 dollars ($496.35) costs. This clearly established the commission of a trespass. How was that trespass committed? Who directed the corporation to continue its acts of infringement until stopped by the mandate of the court? By what means was it enabled to employ counsel, obtain witnesses and secure agents to assist them in their unlawful acts? The answer to these questions is found in the several paragraphs of the complaint.

Paragraphs 3, 4, 5, 6 and 7 allege the issue of the Letters Patent to Julius D. C. Wenger and an assignment to the plaintiff.

Paragraphs 8 and 9 allege the plaintiff's ownership and notice given to the public.

Paragraph 10 alleges the organization of The Little River Mfg. Company with a capital stock of ten thousand dollars ($10,000.00), eight thousand dollars ($8,000.00) of which was paid in in cash, so that the corporation had that amount of money, which it used in infringing the plaintiff's rights.

Paragraph 12 alleges the election of these defendants as directors of this corporation on the 25th day of March, 1904, and that they continued to act as directors until January 1, 1907.

Paragraph 17 alleges that on the 23rd day of July, 1904, a meeting of the directors of the corporation was held and the following vote was passed: "VOTED, to issue a bond of Ten "Thousand Dollars ($10,000.00) to Mr. L. A. Boetiger as an "indemnity against loss in the sale of the 'Apt' clipper due to

"suit of the H. C. Cook Company vs. The Little River Mfg. "Company, Inc." (Record, page 4)

Paragraph 18 alleges "that said vote was passed for the pur- "pose of increasing the sale of said clipper and to make said "sale as large as possible and for the further purpose of securing "and retaining the services of the said Boetiger as selling agent "for the said The Little River Mfg. Company."

Paragraphs 19 and 20 allege the execution of said bond under said vote, and the delivery thereof to the said Boetiger, who then continued to act as selling agent of said corporation and disposed of a large number of clippers to the value of ten thousand dollars ($10,000.00).

Thus far we have only dealt with the corporation. We have seen how it was enabled to carry on business until the damages sustained by the plaintiff amounted to over twelve thousand dollars. It only remains to connect these defendants with the corporation, and to show in what manner they made themselves liable to the plaintiff. Referring again to paragraph 17 of the complaint, record page 4, we find this allegation: "The said "defendants, Beecher, Fairchild, James and Ward were present "at said meeting and voted in favor of giving said bond of "indemnity." The original action was then pending, and the corporation was defending it, and at the same time was using every effort to increase the sale of its infringing clipper.

Paragraph 21 of the complaint alleges "that the defendants, "Beecher, Fairchild, James and Ward constituted a majority of "the directors of the said The Little River Mfg. Company, and "during all the time of the infringement of the plaintiff's patent, "the said Beecher, Fairchild, James and Ward, *were in the full "control and management of said company.* The vote of July "23rd and the execution of the bond of indemnity were the acts "of these defendants committed for the express and declared pur-

"pose of enabling the company to continue its infringement of "the plaintiff's patent."

Paragraph 22 of the complaint alleges "that while having such "control and management of the said company, the said Beecher,

"Fairchild, James and Ward did *as directors and as individuals* "employ certain servants, agents, workmen and employees to "make, sell and dispose of said clippers for and in the name of "the said The Little River Mfg. Company, and did, order, "instruct, authorize, empower and command said servants, agents, "workmen from time to time as to the making of said clippers, "and the number and appearance of the same, and did furnish "all the materials that were necessary to make and deliver said "clippers, and to prepare them ready for sale, and did any and "all other acts that were necessary for the manufacture and sale "of said clippers." This paragraph alleges in the clearest possible manner how these defendants employed workmen, directed their acts and used them in furtherance of their purpose to increase the sale of said "Apt" clipper. Those acts were individual acts. They were not acts of Beecher, Fairchild, James and Ward as directors, acting for the corporation to provide for its lawful and legitimate business. They knew of the pendency of the plaintiff's action; they knew of the alleged infringement; and that an adverse judgment might be rendered against the company.

Paragraph 23 alleges "that in addition to attending the meet- "ings of the board of directors of the said The Little River Mfg. "Company and voting therein to manufacture and continue the "sale of said clippers, and to provide the necessary means there- "for, the said Beecher, Fairchild, James and Ward, *as individuals*, "jointly and severally, from time to time, during the entire period "of the infringing of the patent of the plaintiff by the said The "Little River Mfg. Company, did advise, counsel, instruct, direct, "command and aid the servants, agents and employees of the "said The Little River Mfg. Company in the making and selling

"of said clipper, and did order and direct them as to the number "of clippers to be made and as to the method of selling the same."

Here then are a series of acts extending over many months' duration, during all of which time the defendants were striving to enhance their individual interests. They wanted profits and the only way to get them was to destroy the plaintiff's business and appropriate it to their own enrichment. They left nothing undone to accomplish that purpose. In so doing they were not acting as faithful trustees of the corporation. They assumed the risk of an adverse judgment. It is no excuse for them to urge the advice of counsel, or the sincerity of their own motives. The record shows what their motives were. From the beginning of their trust as directors to the end, they were guided by the one incentive to increase the value of their own stock in the hope that it would return them large profits and dividends. Nor is this all. The corporation had eight thousand dollars ($8,000.00) in cash when it began business in 1902. That business was to manufacture and sell the "Apt" clipper, which was an infringement of the clipper made by the plaintiff. It was the only business of the corporation. Its life depended on its sale, and when the court pronounced sentence of death on that clipper, the corporation ceased to exist. In the meantime these defendants, while having full control and management of said corporation, "authorized, advised and directed to be used for the purpose of "paying said counsel, witnesses and other expenses incurred by "said counsel and the said The Little River Mfg. Company in "the defense of said action, the numerous funds and assets of "said company." Paragraph 24, record page 5.

Paragraph 25 of the complaint, then alleges "that in conse-"quence of and as a result of the use of the numerous funds and "assets of the said The Little River Mfg. Company, in the "manufacture and sale of said clipper and in the defense of said "action, as aforesaid, the entire cash capital of said company was "expended and by reason thereof, said company became insolvent "and on the ——— day of ————, the Superior Court for

"New Haven County in said district, appointed Clifford J. "Atwater, of the Town of Seymour, receiver for said company, "and the said Atwater accepted said appointment and ever since "has been and now is engaged in the discharge of his duty as "such receiver."

Paragraph 28 alleges "that the said The Little River Mfg. "Company is now entirely and hopelessly insolvent and unable "to pay anything upon the debts, claims and liabilities presented "to the said receiver, and the plaintiff is now unable and will be "forever unable to obtain judgment either in whole or in part from "the said The Little River Mfg. Company, or from said receiver, "of the amount due to it on said judgment."

It thus appears that these defendants, in order to promote their individual interest, not only caused the plaintiff a large money loss, but they completely wrecked the corporation, whose interests they were bound to protect. They squandered every dollar committed to their trust. When final judgment was rendered in the original suit, the entire cash capital of the corporation was gone and nothing remained to be done except to wind up its affairs as speedily as possible. Can it be true, as suggested by the court below, that these facts do not show a clear case of infringement by these defendants. May we not properly ask what their purpose was in doing the various acts described in the complaint? It is conceded that the corporation was guilty of an infringement, but how and in what manner did it become an infringer? A corporation can only speak by the mouth of the men who direct its affairs. When they act, the corporation acts. Not one single act done by this infringing corporation was done without the direct authority and direction of the defendants. The several paragraphs of the complaint describe in detail the steps taken by them to continue the infringement. There is, however, one fact which deserves special notice, as it characterizes the defendants' attitude toward the plaintiff. That fact is the passage of the vote under date of July 23rd, 1904. The plaintiff's action was then pending. In that action the plaintiff claimed both legal and

equitable relief and those claims were based on an infringement by the corporation. The vote in question was passed with the aid of the defendants. It was their purpose to enable the corporation to continue its trespass against the plaintiff, and to provide the means for so doing. The bond executed pursuant to the vote contained this language: "Now therefore, The Little "River Mfg. Company covenants and agrees to defend said suit "of the H. C. Cook Company or any other suit or proceedings "either at law or in equity, which may be instituted and prose- "cuted against either the Little River Mfg. Company of the said "L. A. Boetiger, by any alleged claim of infringement or any "other Letters Patent, by any alleged claim of infringement or any "of said 'Apt' clippers." Record page 5. This language admits of only one construction. The pending suit of the plaintiff was to be contested to the end. In the meantime Boetiger was to continue as selling agent and every effort was to be made to increase the volume of business and promote the sale of said infringing clippers. In the event of a successful termination of the plaintiff's suit all costs and damages were to be paid by the corporation. That bond was absolutely worthless when it was given.

Paragraph 30 of the complaint reads as follows: "The defend- "ants had full knowledge of the financial condition of the said "The Little River Mfg. Company and knew that in the event of "a judgment being rendered for the plaintiff in the action brought "against the said company, as above described, that the said com- "pany would thereby be prevented from continuing to manufac- "ture and sell said clipper and that said company would be "hopelessly insolvent and thereby unable to pay the judgment that "would be rendered against it in favor of the plaintiff."

The giving of the bond under such circumstances was a gross fraud. The defendants knew perfectly well that the corporation could not and would not perform the conditions of the bond, and this for the reason that at the very time the bond was given, they were using the cash assets of the corporation to enable them

to carry on their infringement. It ill becomes the perpetrators of that fraud and of that wrong to even suggest immunity from personal liability. So far as appears from the record no other meeting of the directors was held. The various acts of the defendants in carrying on their infringement consisted in their personal conduct. They hired workmen, directed them as to the making, the number and appearance of the infringing clipper and how they should be prepared for sale. These were acts that are not usually provided for by a formal vote at a directors' meeting. They involve details, which are properly left to personal direction from time to time as occasion arises. In thus promoting the sale of their clipper the defendants acted for themselves, at the same time seeking to evade responsibility beneath the shadow of a tottering corporation.

By giving the bond of indemnity under the circumstances stated the defendants became liable as joint trespassers with the corporation for the infringement.

This court so held in the case of *Lovejoy vs. Murray*, 3rd Wall., 1, as follows:

> "It is claimed by counsel that a trespass cannot be "ratified like a contract so as to make the party liable "ab initio. But it is not necessary to decide, in this "case, whether the defendants by giving the bond be-"came liable for what had been done previous to that "time. It is sufficient if they became liable for what was "done by the sheriff after they gave the instrument. "The trespass complained of was a continuing trespass, "and consisted of a series of proceedings, ending in the "sale of the plaintiff's property under execution."

And again

> "The giving of the bond by the present defendants, "must, therefore, be held equivalent to a personal inter-"ference in the course of the proceeding, by directing

"or requesting the sheriff to hold the goods as if they "were the property of the defendants in attachment. In "doing this they assume the direction and control of the "sheriff's future action, so far as it might constitute a "trespass; and they became to that extent principals, "and he their agent in the transaction. This made "them responsible for the continuance of the wrongful "possession, and for the sale and conversion of the "goods; in other words, for all the real damages which "the plaintiff sustained."

We submit that this language is peculiarly applicable to this case. In the case cited the bond of indemnity was given for the personal benefit of the plaintiff, who was seeking to secure the payment of an amount claimed by him to be due. So here, these defendants were stockholders of this corporation. The value of that stock was in jeopardy. The profits and dividends, which the defendants might receive, depended upon the result of the litigation then pending. They, therefore, had a direct personal interest in the result of that suit, and it was to protect that interest that they authorized and directed the giving of the bond in the name of the corporation. They knew the financial condition of the corporation. They were using its funds, not only to carry on business, but also to continue the defense of the plaintiff's suit. Under such circumstances there can be no question as to the liability of these defendants as joint trespassers.

The remaining question relates to the effect to be given to an unsatisfied judgment against only one of a number of joint trespassers. Can these defendants successfully plead the judgment against The Little River Mfg. Company as a bar to the present action? The original action was against the corporation only. It was then supposed that it was perfectly solvent. Its insolvency did not appear until the hearing before the master. Upon this discovery, application was made to the court to file a supplemental bill and bring in these defendants as parties in that action. That motion was denied and thereupon the present suit was brought.

We believe the law to be well established that all parties concerned in the commission of a tort are jointly and severally liable. The infringement of a patent is a trespass and comes within the rule stated. An unsatisfied judgment against one joint trespasser is not a bar to a suit against another joint trespasser. Nothing less than satisfaction will bar the plaintiff's right to seek payment in as many actions as may be necessary. This rule was established in the case of *Lovejoy vs. Murray, supra.* In the opinion rendered by the court a number of cases, both English and American, are cited, and as a result the court say:

> "We are, therefore, of the opinion that nothing short "of satisfaction or its equivalent can make good a plea "of former judgment in trespass offered as a bar in an "action against another joint trespasser who was not "party to the first judgment."

We do not deem it necessary to multiply the citation of authorities on a point that is so well settled.

The question of the personal liability of the directors for the infringement of the plaintiff's patent is not now before the court. The only question is one of jurisdiction. We have endeavored to show that the complaint involves the question of infringement, and that the Circuit Court had jurisdiction to entertain the case as made by the pleadings. We, therefore, submit, there was manifest error in the judgment of the court in dismissing the case. It may not be out of place to remark that counsel for the defendants conceded that the court did have jurisdiction.

All of which is respectfully submitted.

VERENICE MUNGER,
Attorney for the Plaintiff.

FILED
MAR 26 1910
JAMES H. McKENNEY

Supreme Court of the United States

Number 659.

THE H. C. COOK COMPANY,
Plaintiff in Error,

against

FRANK H. BEECHER,
CHARLES E. FAIRCHILD,
THOMAS L. JAMES, and
WILLIAM L. WARD,
Defendants in Error.

BRIEF FOR THE DEFENDANTS IN ERROR.

TALCOTT H. RUSSELL,
Attorney for Defendants in Error.

The Tuttle, Morehouse & Taylor Co., Law Printers

Supreme Court of the United States.

THE H. C. COOK COMPANY,
PLAINTIFF IN ERROR,
against
FRANK H. BEECHER,
CHARLES E. FAIRCHILD,
THOMAS L. JAMES, AND
WILLIAM L. WARD,
DEFENDANTS IN ERROR.

No. 659.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT.

This was an action at law brought by the plaintiff in error against the defendants in error in the Circuit Court of the District of Connecticut.

The Court of its own motion raised the question of its jurisdiction. The defendants waived that question, but the Court of its own motion dismissed the action for lack of jurisdiction. As stated in the brief for the plaintiff in error, the defendants conceded, and now concede that the Circuit Court has jurisdiction of the action. The defendants in error concur in the view of the plaintiff in error that the judgment of dismissal by the Circuit Court should be reversed and the

case remanded to that Court. The defendants in error submit, however, that the reversal of the judgment should be at the cost of the plaintiff in error, since the defendants in error not only did not request the Circuit Court to dismiss the case, but expressly waived the question of jurisdiction. They therefore request that the judgment be reversed at the cost of the plaintiff in error, in accordance with the rule laid down in Norton vs. McCleary, 8 Ohio State, 205.

If the Court should think that the plaintiff in error ought not to pay costs, then no costs should be allowed in this Court for the reason laid down in Sloan's Case, 1 Root (Conn.), 151, that it is "unreasonable that the parties should pay costs for the error of the judge."

Respectfully submitted,

TALCOTT H. RUSSELL,

Attorney for the Defendants in Error.